

The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, 2 N. Main Street, Elm Square, Andover

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Present were: Brown (Chair); Boness (Acting Clerk); Bargnesi, Member; and Oltman (Associate Member).

The meeting opened at 6:38 p.m. Brown explained that this separate meeting is being held in order to hear a petition filed by ZBA Member Neil Magenheim & his wife, Robyn.

Petition No.: 4052

Premises affected: 14 Henderson Ave

Petitioner: Magenheim

Neil & Robyn Magenheim represented themselves in their request for a variance from Art. VIII, Section 4.2.4 to install an in-ground swimming pool that will not meet the minimum side & rear yard depth requirements. The proposed rear & side setbacks are 5' where a minimum of 10' is required for the rear and 20' for the side on their corner lot in the SRA district. They noted that their house is cited in the middle of the corner lot & that a similar request was granted at 11 High Street with a 3' rear setback. The 5' setback is to the water's edge & does not include the decking, which will be right up to the lot line. The Board discussed the issue with corner lots in which the rear & side lot lines are uncertain. The Board asked about the topography of the lot & possible alternative locations for the pool. The Magenheims conceded that they can reduce the width of the decking & place crushed stone, but due to the size of the pool, if it were relocated, they wouldn't be able to walk around it. The decking will be poured concrete & the pool will be concrete with a vinyl liner. There is an existing 6' fence between #14 & 16 Henderson Ave and they will install a 6' fence between #12 & 14, plus a 2' retaining wall under that section of fence.

Brian Emmons, abutter at 12 Henderson Ave, on behalf of his mother, Dagmar Emmons, owner/occupant at 12 Henderson Ave, submitted photos from #12 depicting that their lot is down gradient, as well as an aerial view showing the proximity of the proposed pool to one of their bedroom windows. He stated his mother's opposition based on it being too close to the lot line; that the pool would increase drainage issues, and decrease property values due to noise generated from pool use. They feel the pool will overburden the lot and that there are alternative locations for the pool. Mr. Emmons voiced his own opposition to the location of the pool, not the pool itself, adding that it will change the character of the neighborhood. Mrs. Pat Malone, 46 Lupine Rd abutter, voiced opposition. Tyler Bishop, 16 Henderson Ave, spoke in favor and commented that the pool will increase property value; decrease erosion and that other houses in the neighborhood have had pools, plus the Emmons' hot tub is running 3' from the lot line. Jesse Cooper, 10 Henderson Ave, spoke in favor. Mr. Magenheim pointed out that the pool location is a good distance from the corner of the Emmons' house and that the retaining wall will mitigate run-off/erosion. Based on the professional assessments they had done, pools decrease run-off because they catch water. Mrs. Malone voiced concern for leaking underground pipes associated with the pool.

Brown asked for the hardship. Mr. Magenheim cited the central location of the house on the lot, adding that their same 3 children who play outside now on the swing set will be in the pool. Mrs. Magenheim noted that there will be no diving board or deep end, plus a 6' fence to decrease noise overspill to abutters. Additionally the corner of the pool was cut to create a 10-12' diagonal setback to #14. Mr. Emmons argued that there are alternative locations.

McDonough made a motion to waive the site view & close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

Brown noted the similar case at 11 High Street in which the ZBA granted a variance for a pool, but he is concerned with the apron being on the lot line & the size of the pool. McDonough commented that historically the Board has not granted variances when neighbors are opposed based on the statutory language that the granting of the variance shall not be detrimental to the public good. Bargnesi is not opposed to the requested variance. Boness voiced concern over the proximity of the pool to adjacent structures & the lot line. Oltman understands that the location of the house on the lot decreases the possible locations for a pool, but that the fence & retaining wall will mitigate noise. Brown suggested coming up with an alternative design that will meet the petitioners' & abutters'. In order to do so, the petitioners can withdraw the current petition without prejudice & file anew or the Board can re-open the public hearing & continue the hearing. The Magenheims chose to re-open & continue

the hearing in order to come up with alternatives. McDonough made a motion to re-open the public hearing. Boness seconded the motion & the Board voted (5-0) to re-open the public hearing. Brown clarified that the continuance would be to the 10/3/13 meeting. McDonough made a motion to continue the public hearing to 10/3/13. Oltman seconded the motion & the Board voted (5-0) to continue the hearing to 10/3/13.

Bargnesi made a motion to adjourn the special meeting. Boness seconded the motion & the Board voted unanimously (5-0) to adjourn the special meeting at 7:26 p.m. Brown announced that the Board will take a 10 minute break before opening the next meeting.